IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 30, 2008

STATE OF TENNESSEE v. GEORGE T. POPE

Appeal from the Criminal Court for Sullivan County
No. S50,671 Robert H. Montgomery, Judge

No. E2007-01986-CCA-R3-CD - Filed November 18, 2008

Appellant, George T. Pope, was indicted by the Sullivan County Grand Jury for possession of .5 grams or more of cocaine with the intent to sell or deliver, possession of twenty-six grams or more of cocaine with the intent to sell or deliver, and possession of drug paraphernalia. Prior to trial, the State dismissed the charge for possession of .5 grams or more of cocaine with the intent to sell or deliver. After a jury trial, Appellant was convicted of the remaining counts of the indictment. The trial court sentenced Appellant to an effective sentence of eleven years and approved the jury's recommendation of a $200,000 fine. After the denial of a motion for new trial, Appellant sought an appeal. He argues that the evidence is insufficient to support the convictions. We determine that the evidence is sufficient to support the convictions. Consequently, the judgments of the trial court are affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court are Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J. and CAMILLE R. MCMULLEN, J., joined.

Richard A. Tate, Assistant Public Defender, Blountville, Tennessee, for the appellant, George T. Pope.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; Greeley Wells, District Attorney General and Kent Chitwood, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Appellant was indicted by the Sullivan County Grand Jury in July of 2005 for possession of .5 grams or more of cocaine with the intent to sell or deliver, possession of twenty-six grams or more of cocaine with the intent to sell or deliver, and possession of drug paraphernalia as a result of activities that took place on April 18, 2005.

Lieutenant Terry Johnson of the Bristol Police Department Vice Division was assigned to operate as an undercover officer in drug cases. In the early afternoon of April 18, 2005, Lieutenant Johnson called Appellant to set up a drug transaction. Lieutenant Johnson used a confidential informant to help facilitate the drug purchase and exchange. Appellant agreed to sell Lieutenant Johnson two ounces of cocaine in exchange for $2,000.[1] Lieutenant Johnson offered to meet Appellant "anywhere in public if he was afraid of being ripped off." Appellant eventually agreed to meet Lieutenant Johnson at the gazebo in the center of Anderson Street Park, about one-half a mile away from the police department.

When the details of the transaction were solidified, Lieutenant Johnson notified the officers on his "cover team" that he was about to purchase cocaine from Appellant. Lieutenant Johnson drove to the area near the park in an unmarked patrol car and parked in an adjacent parking lot. Appellant called Lieutenant Johnson on his cell phone and informed him that he was at the park but wanted the confidential informant to make the transaction. Lieutenant Johnson wanted to make the purchase himself, in order to avoid chain of custody issues.

Lieutenant Johnson left his patrol car while he was talking to Appellant on his cell phone. Once he walked a few steps, he could see Appellant standing beside the gazebo talking on a cell phone. Lieutenant Johnson could not see anyone else at the park. As Lieutenant Johnson approached Appellant, he could both hear and see him talking into the phone. Appellant informed Lieutenant Johnson that he wanted to deal with the confidential informant. Lieutenant Johnson told Appellant that he had the money for the transaction; he held the money out and continued to walk toward Appellant. Appellant started to walk the other way, toward the intersection at Fifth Street and Edgemont Avenue. When Appellant started to leave the area, Lieutenant Johnson notified the cover team that Appellant was on the move. Appellant then broke into a run.

A patrol unit saw Appellant running toward Edgemont Avenue and pulled onto the sidewalk. Appellant reversed direction and ran towards Fifth Street. When a second set of cover officers arrived from this direction, Appellant again reversed direction and began running "northwest." As the officers closed in on Appellant, Appellant reached into his back pocket and threw something out into the middle of Edgemont Avenue. Appellant was taken into custody. One of the officers on the scene secured the "baggie" that Appellant threw to the ground. It appeared to have "some white substance in it." Lieutenant Johnson left the area so that he could maintain his undercover position.

Detective Bobby Bedwell responded as part of the cover team for Lieutenant Johnson. Detective Bedwell waited across from the YMCA on Edgemont Avenue for the "order to move in" on Appellant. When Detective Bedwell got the order to move in, he saw Appellant turn and begin to run. The officer pulled his patrol car onto the sidewalk and left his vehicle. Appellant ran directly toward Detective Bedwell, who instructed him to make his hands visible and "get on the ground." Detective Bedwell could not see Appellant's hands at that point because they appeared to be behind

[1] At trial, Lieutenant Johnson testified that two ounces of cocaine was equivalent to approximately fifty-six grams. The street value of that amount of cocaine in the Bristol area at the time was $10,000 to $12,000.

his back. Detective Bedwell drew his weapon because he thought that Appellant might be reaching for a weapon. At that point, Appellant pulled a plastic bag from behind his back. Appellant fell to the ground and simultaneously threw "in an underhand motion . . . the white plastic colored bag" into the middle of Edgemont Avenue.

Detective Charlie Thomas was also part of the cover team that day. He was stationed in the area of King Pharmaceuticals on Fifth Street and was responsible for setting up surveillance on Lieutenant Johnson. Detective Thomas witnessed Lieutenant Johnson approach Appellant and saw Appellant run the other way. Detective Thomas also saw Appellant "throw a bag out in the roadway." Detective Thomas actually retrieved the bag and logged it as evidence. Detective Thomas also photographed the contents of Appellant's pockets which included a cell phone, another bag containing a smaller amount of drugs, and a cigarette pack that held a "glass crack pipe."

Officer Keith Feathers was responsible for the audio device that Lieutenant Johnson wore during the transaction. He was parked with Detective Thomas at the King Pharmaceutical lot. For some reason, the audio equipment did not work on the day that Appellant was arrested. Later testing of Appellant's cell phone revealed that he had made telephone calls to Lieutenant Johnson's cell phone. Officer Feathers also witnessed Appellant running away from the area and saw Appellant throw an item into the roadway.

The bags were tested for latent fingerprints. There were no identifiable latent prints on the bag. Special Agent Glen Glenn of the Tennessee Bureau of Investigation tested the substance in the plastic bag that Appellant discarded into the roadway. The rock-like substance weighed a total of 50.6 grams and consisted of cocaine base.

At the conclusion of the jury trial, Appellant was found guilty of possession of twenty-six grams or more of cocaine with the intent to sell or deliver, a Class B felony, and possession of drug paraphernalia, a Class A misdemeanor. At a sentencing hearing, the trial court sentenced Appellant to eleven years as a Range I Standard Offender for the possession of cocaine with intent to sell or deliver conviction and eleven months and twenty-nine days for the possession of drug paraphernalia conviction. The sentences were to run concurrently to each other, for a total effective sentence of eleven years.

Appellant filed a timely motion for new trial in which he challenged the sufficiency of the evidence. After the denial of the motion, Appellant filed a timely notice of appeal.

Analysis

On appeal, Appellant contends that the evidence was insufficient to support his convictions for possession of more than twenty-six grams of cocaine with the intent to sell or deliver. Specifically, Appellant argues that the State "failed to prove that he was attempting to [sell] or deliver cocaine beyond a reasonable doubt and request [sic] that the decision of the trial court be reversed." The State disagrees, contending that the evidence supports Appellant's convictions.

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and "approved by the trial judge, accredits the testimony of the "State's witnesses and resolves all conflicts in the testimony in favor of the State." *State v. Cazes*, 875 S.W.2d 253, 259 (Tenn. 1994); *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption "and replaces it with one of guilt." *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. *Id.* The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Harris*, 839 S.W.2d at 75. In making this decision, we are to accord the State "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." *See Tuggle*, 639 S.W.2d at 914. As such, this Court is precluded from reweighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." *Matthews*, 805 S.W.2d at 779. Further, questions of witness credibility, the weight and value of evidence, and resolution of conflicts in the evidence are entrusted to the trier of fact. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996).

In order to be convicted of possession of twenty-six grams or more of cocaine with the intent to sell or deliver, the State must prove that Appellant "knowingly possess[ed] a controlled substance with the intent to manufacture, deliver or sell the controlled substance." T.C.A. § 39-17-417(a)(4). It is permissible for the jury to "draw an inference of intent to sell or deliver when the amount of the controlled substance and other relevant facts surrounding the arrest are considered together." T.C.A. § 39-17-419; *see also State v. Willie Earl Kyles, Jr.*, No. W2001-01931-CCA-R3-CD, 2002 WL 927604, at *2 (Tenn. Crim. App., at Jackson, May 3, 2002), (concluding that jury could infer possession of drugs with intent to sell or deliver from amount of drugs and circumstances surrounding arrest of defendant); *perm. app. denied*, (Tenn. Oct. 21, 2002); *State v. James R. Huntington*, No. 02C01-9407-CR-00149, 1995 WL 134589, at *3-4 (Tenn. Crim. App., at Jackson, Mar. 29, 1995), (determining that jury could infer intent to sell marijuana primarily from large quantity of marijuana in defendant's possession); *perm. app. denied*, (Tenn. Jul. 10, 1995).

A review of the record reveals that the evidence was sufficient to support the conviction. Appellant was in possession of a significant amount of cocaine at the time and place that an undercover police officer agreed to meet him. The record revealed that Appellant communicated with the undercover officer via cell phone. When Officer Johnson approached Appellant, Appellant began to run in the opposite direction. Several other officers saw Appellant throw something into the middle of Edgemont Avenue. The item was later discovered to be a plastic baggie containing 50.6 grams of crack cocaine. When searched, a small amount of drugs and a glass pipe used for smoking crack cocaine was found in Appellant's pocket. We determine that this evidence is more

than sufficient to support the convictions. Accordingly, Appellant is not entitled to relief on this issue.

Conclusion

For the foregoing reasons, the judgments of the trial court are affirmed.

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JERRY L. SMITH, JUDGE